

REMARKS

Favorable reconsideration of this application is requested in view of the above amendments and in light of the following remarks and discussion.

Claims 1-26 are pending. Claims 7, 8, 12, 18, 23-26 are amended. As discussed during the personal interview conducted on May 5, 2011, Claims 1, 12, and 26 are amended based on features discussed in numbered paragraph [0022] of the published application. Support for the amendments to Claims 8, 18 and 23-25 is self-evident. Claims 1-6 and 15-17 are withdrawn. No new matter is added.

In the outstanding Office Action, Claims 23-25 were objected to as including informalities. Claim 20 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 7-14, 21, 22, and 26 were rejected under 35 U.S.C. § 103(a) as obvious over Bardin et al. (EP 1243210). Claims 18-20 and 23-25 were rejected under 35 U.S.C. § 103(a) as obvious over Bardin in view of Hale (U.S. Patent No. 6,810,788).

At the outset, Applicant notes with appreciation the courtesy of a personal interview granted by Examiner Williams and Examiner Shiekh to Applicant's representative on May 5, 2011. In combination with the interview summary provided by Examiner Williams, the substance of the personal interview is provided below, in accordance with MPEP § 713.04.

Regarding the objection to Claims 23-25 as including informalities, Applicant notes that these claims are singly dependent versions of original Claim 18, which included multiple dependencies. Claims 23-25 as submitted in the previous amendment included the same preamble (aside from the claim number of the referenced claim) as original Claim 18. Further, this form of preamble is not prohibited. However, in order to advance prosecution, these claims are amended substantially in accordance with the language suggested in the

outstanding Office Action. Accordingly, Applicant respectfully submits that the objection to Claims 23-25 is overcome.

Regarding the rejection of Claim 20 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, that rejection is respectfully traversed by the present response.

Regarding the language “wherein said dispensing wall is configured to move outwardly relative to an interior of the capsule,” Applicant respectfully notes that “the subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement (see MPEP § 2163.03). Applicant further respectfully notes that the description of FIG. 7, especially when compared to the description of Fig. 8, fully supports the scope of Claim 20. For example, numbered paragraph [0050] of the published application (U.S. 2009/0175986) states that “The dispensing wall F deforms outwardly to the capsule, eventually producing (FIG. 7) a dispensing opening 11 in the shape of a substantially circular crown around the puncturing member 9.” Accordingly, Applicant respectfully submits that, although the specific words recited in Claim 20 may not be reproduced identically within the remainder of the specification, a person of ordinary skill in the art would clearly be allowed to recognize that Applicant invented what is claimed in Claim 20, i.e., that Applicant had in possession, at the time the application was filed, of the claimed subject matter. In this respect, Applicant notes that “An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, **figures**, diagrams, and formulas that fully set forth the claimed invention.” MPEP § 2163.02 citing *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565 at 1572 (Fed. Cir. 1997) (emphasis added). Applicant respectfully notes that, in addition to the text of the application, the figures may also support the recited invention. Accordingly, in light of the content of

Figs. 7 and 8 and the description of FIG. 7, especially in comparison to the description of FIG. 8, a person of ordinary skill in the art would understand that Applicant had possession of the claimed invention at the time the application was filed. Therefore, the rejection of Claim 20 as failing to comply with the written description requirement should be withdrawn.

Regarding the rejection of Claim 7 as obvious over Bardin, that rejection is respectfully traversed by the present response.

Independent Claim 7 recites, in part:

a dispensing wall and a dispensing wall lid portion which opens to form a dispensing opening for said beverage,
wherein said capsule includes means for repeatedly increasing and decreasing an area of said dispensing opening during dispensing the beverage from said capsule such that a cycle of increasing and decreasing the area of said opening repeats as long as water is added to the capsule.

Thus, the capsule varies an area of the dispensing opening repeatedly as long as water is added to the capsule.

As discussed during the personal interview, one benefit of the above-noted arrangement is that a "froth" can be produced automatically by the capsule. The froth is desired by consumers of the beverage. In this regard, the specification of the present application states "a good final appearance means having a "froth", i.e. a layer of foam made of small bubbles, which is lasting and in an appreciable amount."¹

In contrast, as discussed during the personal interview, none of the cited references discloses a container opening that **repeatedly increases and decreases in area as long as water is added to the container** as recited in amended independent Claim 1. Rather, Bardin actually teaches away from such movement or at least includes statements indicating that the design of the device in Bardin is intended to remain stationary.

¹ Background of the Published Application, numbered paragraph [0006].

In this regard, Bardin states:

[0022] The body 11 of the capsule is preferably constituted of a pressure resistant but elastically deformable material such as a thin, semi-rigid plastic material. More particularly, the second surface or bottom side 17 of the capsule should be able to withstand an inside pressure of several bars; i.e., 1.5 to 15 bars, preferable 2-6 bars, while being capable of expanding outwardly as a response to such building-up of pressure. For that, the capsule may be made of plastic such as PP and PE or any other suitable foodgrade and heat and pressure resistant polymer material having a thickness of between 0.25 to 2 mm. As illustrated in Fig. 2 to 3A, the bottom side comprises an opening member 20. The opening member includes a continuous precut line 21 which traverses the thickness "t" of the bottom side. The precut line 21 is preferably a portion of circle although its geometry is not limiting but may also encompass a large choice of other possible shapes. Folding means 22 is further provided which is arranged with the precut line so that the opening member is capable of folding inwardly along a privileged folding line. For that, the folding means may preferably be a single foldable portion 23 located between both ends of the precut line 21. **The foldable portion is preferably non-recovering in the sense that when submitted to a flexure, the opening member does not recover its initial position of before the flexure. This important aspect ensures that when the pressure in the capsule starts decreasing due to the release effect, the opening remains open and the beverage can be fully dispensed.**²

Bardin additionally states:

[0031] As shown by Fig. 5, pressurized hot water enters the capsule through the two small holes 14, 15 of the lid and mix with the powder inside the capsule. As more water enters the capsule, the inside pressure starts building up so causing the body of the capsule, and more particularly, its bottom side, to deform outwardly. As the bottom deforms, the distance between the plunger and the capsule starts lessening until the opening member 20 of the capsule comes into abutting contact with the pressure surface 41 of the plunger as shown in Fig. 5. The capsule keeps deforming outwards till the pressure surface of the plunger starts applying a reaction force to the inside pressure. Such reaction force as gradually increasing acts on the opening member which flexes along its folding portion 23 (Fig. 6 and 8). As shown by Fig. 8 and 8A, in its periphery, the bulged surface 40 is adapted to substantially fit the peripheral contour or demarcation line 26 of the opening as the surface of

² Bardin, numbered paragraph [0022] (emphasis added).

the capsule deforms outwards while pushing the opening member in the center of the surface. As the opening member moves inwards, the liquid mixture which has reached a desired pressure inside is released through the radial channels 42 provided on the pressure surface. The pressure that releases after exiting the channels generates foams and the pressure inside the capsule stabilized (Fig. 6). At the end of the dispensing, the water stops entering the capsule and the plunger separates from the capsule as the **capsule** substantially or partially recovers its initial dimension due to the release of inside pressure. **As the opening member has the ability to remain open, the beverage remaining inside the capsule can be fully discharged to the outlet.**³

Thus, Bardin intends for the folding portion (23) to remain open while it is the capsule itself that recovers its initial dimension. When reading the above-quoted text from Bardin, a person of ordinary skill in the art would have been dissuaded from providing structure that repeatedly changes an area of the opening as long as water is added to the container having the opening.

In this regard, Bardin states that “[t]he foldable portion is preferably non-recovering in the sense that when submitted to a flexure, the opening member does not recover its initial position.” Bardin further states “This important aspect ensures that when the pressure in the capsule starts decreasing due to the release effect, the opening remains open and the beverage can be fully dispensed.” Accordingly, the above-quoted text from Bardin indicates that the foldable portion is non-recovering and does not repeatedly increase and decrease an area of an opening as long as water is provided to the container. Nothing in the remainder of Bardin's device would provide the effect recited in Claim 7 either.

The outstanding Office Action cites Hale for a filter, and Hale fails to remedy the deficiencies discussed above regarding Bardin.

Accordingly, the rejection of independent Claim 7 and the rejection of Claims 12 and 26, which recite substantially similar features to those discussed above regarding Claim 7, are

³ Bardin, numbered paragraph [0031] (emphasis added).

overcome. Any claims depending from one of the above-noted claims also patentably distinguish over any proper combination of the cited references for at least the same reasons as the respective independent claim does.

Applicant wishes to make the following additional remarks regarding independent

Claim 12 which recites, in part:

wherein at least part of said dispensing wall has a rigidity within the range of 10 to 55 N/mm measured by compression with a punch and deflection set to 3 mm such that....

Thus, **the rigidity is within a range of 10 to 55 N/mm**. This rigidity is measured by a compression punch with a deflection set to 3 mm.

Similarly, dependent **Claim 11** recites:

The capsule according to claim 7, wherein at least part of said dispensing wall has a rigidity within a range of 10 to 55 N/mm measured by compression with a punch and deflection set to 3 mm.

In the rejection of Claim 12, the outstanding Office Action acknowledges that “the reference does not disclose the rigidity of the capsules as measured by a punch.”⁴ The outstanding Office Action goes on to state that it would have been obvious at the time the claimed invention was made to construct a capsule “with enough rigidity, including that presently claimed, to withstand the pressure of the extraction system.” The outstanding Office Action also asserts that the above-noted rigidity is merely “the selection of a known material based on its suitability for its intended use.”

Applicant respectfully notes that, as acknowledged in the outstanding Office Action, Bardin is silent regarding the particular rigidity recited in Claim 12, and Bardin is further silent regarding repeatedly increasing and decreasing an area of an opening as long as water is added to the container. Thus, as Bardin does not intend to repeatedly increase and decrease the area of the opening as long as water is added as recited in Claim 12, Bardin does not

⁴ Outstanding Office Action, page 5.

recognize the rigidity of the container **as a result effective variable** for providing this result.

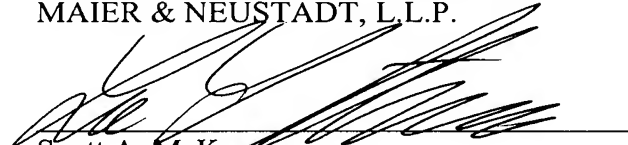
In other words, to have selected the particular rigidity recited in independent Claim 12, a person of ordinary skill in the art reading Bardin would have had to have discerned from the prior art that the above-noted rigidity recited in Claim 12 has the particular effect recited in Claim 12. Bardin is silent as to this effect, and a person of ordinary skill in the art would therefore not have had any reason to select the particular rigidity recited in Claims 11 and 12, and the rejection of Claims 11 and 12 should be withdrawn.

For the foregoing reasons, it is respectfully submitted that this application is in condition for allowance. A Notice of Allowance for Claims 1-26 is earnestly solicited.

Should Examiner Williams deem that any further action is necessary to place this application in even better form for allowance, she is encouraged to contact Applicant's undersigned representative at the below-listed telephone number.

Respectfully submitted,

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